

VANDERSLICE DECL. EXHIBIT A10

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MAXIMILIAN KLEIN, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
Corporation,

Defendant.

Case No. 3:20-cv-08570-JD

**DECLARATION OF JOHN I. KARIN IN
SUPPORT OF OMNIBUS SEALING
MOTIONS RELATING TO CLASS
CERTIFICATION BRIEFING AND
RELATED DOCUMENTS**

Judge: Hon. James Donato

I, John I. Karin, declare as follows:

1. I am an attorney at Wilson Sonsini Goodrich & Rosati P.C., and am counsel for Non-Party Snap Inc. ("Snap") in the above-captioned matter. I submit this Declaration in support of the

1 Omnibus Sealing Motions Relating to Class Certification Briefing and Related Documents. I have
 2 personal knowledge of the facts set forth herein and am competent to testify thereto if called as a
 3 witness.

4 2. Counsel for Meta Platforms, Inc. (“Meta”), Advertiser Plaintiffs, and Consumer
 5 Plaintiffs provided counsel for Snap with excerpts of 16 documents filed under seal in connection
 6 with the class certification briefing because they contain information Snap designated Confidential
 7 or Highly Confidential under the protective order in this case. After reviewing the documents, Snap
 8 has determined to request continued sealing of only portions of two of these documents.

9 3. The public’s right to access judicial records is not absolute. *Nixon v. Warner*
 10 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 117,
 11 1178 (9th Cir. 2006). Indeed, the United States Supreme Court recognizes that courts have
 12 discretion to control and seal records and files in their possession. *Nixon*, 435 U.S. at 598. “Every
 13 court has supervisory power over its own records and files, and access has been denied where court
 14 files might have become a vehicle for improper purposes.” *Id.* Thus, district courts have
 15 broad latitude to enter protective orders to prevent disclosure of many types of information,
 16 “including, but not limited to, trade secrets or other confidential research, development, or
 17 commercial information.” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 18 1211 (9th Cir. 2002).

19 4. The Ninth Circuit has “carved out an exception to the presumption of access to
 20 judicial records . . . attached to a non-dispositive motion such that the usual presumption of the
 21 public’s right of access is rebutted.” *Kamakana*, 447 F.3d at 1179 (internal quotation marks
 22 omitted). This exception exists because “the public has less of a need for access to court records
 23 attached only to non-dispositive motions because those documents are often unrelated, or only
 24 tangentially related, to the underlying cause of action.” *Id.* (internal quotation marks omitted). In
 25 such a case, a “particularized showing of good cause suffices to warrant preserving the secrecy of
 26 sealed discovery material attached to non-dispositive motions.” *JUUL Labs, Inc. v. Chou*, 2022 WL
 27 2165412, at *2 (C.D. Cal. Feb. 8, 2022).

1 5. Good cause exists where sealing material would “protect a party or person
2 from annoyance, embarrassment, oppression, or undue burden or expense.” *Pintos v. Pac. Creditors*
3 *Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010). This includes where publicly disclosing material could
4 cause a non-party competitive harm. *See Monster Energy Co. v. Vital Pharmaceuticals, Inc.*, 2019
5 WL 3099711, at *2 (C.D. Cal. June 17, 2019) (“Courts also routinely find that non-public financial,
6 pricing, and strategy information could harm litigants’ competitive standing and grant motions
7 to seal such information”). Courts in the Ninth Circuit have found good cause where the information
8 to be sealed included “confidential product and business information which [was] not intended for
9 public disclosure.” *Finisar Corp. v. Nistica, Inc.*, 2015 WL 3988132, at *4 (N.D. Cal. June 30,
10 2015).

11 6. The Ninth Circuit has not yet determined whether a motion for class certification is
12 a non-dispositive motion subject to the “good cause” standard or a dispositive motion subject to the
13 higher “compelling reasons” standard. *True Health Chiropractic Inc. v. McKesson Corp.*, 2019 WL
14 11743580, at *2 (N.D. Cal. Aug. 13, 2019). However, the majority of courts within this Circuit treat
15 motions for class certification as non-dispositive motions to which the “good cause” standard
16 applies. *Health v. Google LLC*, 2018 WL 11465387, at *2 (N.D. Cal. June 22, 2018). Nevertheless,
17 if the Court determines that the “compelling reasons” standard applies, then Snap respectfully
18 submits that its requests still meet that standard.

19 7. Courts in the Ninth Circuit have found that compelling reasons exist where the
20 information under seal included information that would provide competitors with insight into their
21 business model, strategies, and practices. *True Health Chiropractic Inc.*, 2019 WL 11743580, at
22 *1; *In re Qualcomm Litig.*, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017). This is particularly
23 true for confidential information contained in “Board meeting agenda, minutes, packages, and
24 presentations.” *Guo v. Woodman*, 2018 U.S. Dist. LEXIS 28065, at *3-4 (N.D. Cal. Feb. 21, 2018).
25 Moreover, courts in this District look for specific harm that may result if such confidential
26 information is made public. *Id.* Such harm includes confidential information, that if revealed, would
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1 allow the movant's competitors to compete more effectively against the movant and cause the
2 movant competitive harm. *Id.*

3 8. The request to seal information must be narrowly tailored as to seek sealing of only
4 sealable material. *True Health Chiropractic Inc.*, 2019 WL 11743580, at *1.

5 9. The documents at issue here consist of Exhibit 17 to Meta's Reply in Support of
6 Meta's Motion to Exclude Testimony of Scott Fasser and Joshua Gans (Dkt. No. 683-5), and the
7 User Class Rebuttal Report of Catherine Tucker (Dkt. Nos. 645-19, 663-4, 669-6).

8 10. Snap requests that the Court maintain the following portions of these documents
9 under seal because the "good cause" standard as well as the "compelling reasons" standard are met.
10 Snap's proposed redactions are narrowly tailored to remove the information that if released to the
11 public would cause specific harm to Snap. Excerpts of these documents are attached to this
12 Declaration and filed under seal with requested redactions highlighted in green.

Exhibit Number to Karin Declaration	Document	Portions to Be Filed Under Seal	Reason for Sealing
1	Exhibit 17 to Meta's Reply in Support of Meta's Motion to Exclude Testimony of Scott Fasser and Joshua Gans. Dkt. No. 683-5.	Portions highlighted in green.	This document identifies Snap's highly sensitive business strategies, and Snap's non-public analysis of its competitive differentiators for its advertising products.
2	User Class Rebuttal Report of Catherine Tucker. Dkt. Nos. 645-19, 663-4, 669-6.	Portions highlighted in green.	This document quotes December 2021 materials for Snap's Board of Directors, and details highly sensitive internal business strategies Snap implemented to make Spotlight more competitive.

11. Exhibit 1 contains a detailed breakdown of Snap's assessment of its targeting suite and how Snap perceives its efforts to stack up against Snap's competitors. This is an internal assessment of Snap's advertising product offerings that is competitively sensitive and would cause significant harm to Snap if made public. Snap does not regularly disclose this type of information. Such information, if public, would provide Snap's competitors with insight into Snap's business strategies. Snap's competitors could use this document to develop ideas for how to improve their own products and therefore erode Snap's competitive advantages. *See True Health Chiropractic Inc.*, 2019 WL 11743580, at *1-2 (explaining that confidential business strategies meet the "compelling reasons" standard). Additionally, the portions proposed to be redacted are narrowly tailored to remove non-public Snap information regarding how Snap perceives the quality of its offerings when compared to the offerings of its key competitors.

12. Exhibit 2 is directly quoting December 2021 materials for Snap's Board of Directors. These Board materials are recent and discuss a competitively sensitive aspect of Snap's business. *See Guo*, 2018 U.S. Dist. LEXIS 28065, at *3-4 (finding that product information included in materials presented to the Board, if made public, would cause competitive harm to GoPro). The information Snap seeks to keep under seal contains a detailed analysis of Snap's Spotlight offering and efforts Snap implemented to improve its product. This information is recent and documents, in detail, Snap's strategic efforts regarding Spotlight. Snap does not regularly disclose this type of information, and proposes narrowly drawn redactions to seal information that reveals Snap's business strategies. Snap's competitors could use this document to develop ideas for how to improve their own products and therefore erode Snap's competitive advantages.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of November, 2023, in New York, New York.



John I. Karin